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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	Sinbad Grand Cafe, LLC		
Entity	Limited Liability Company	Citizenship	Michigan
Address	21060 Coolidge Highway Oak Park, MI 48237 UNITED STATES		

Attorney information	Natu J. Patel The Patel Law Firm, P.C. 2532 Dupont Drive Irvine, CA 92612 UNITED STATES NPatel@thePatelLawFirm.com Phone:949-955-1077
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### Registration Subject to Cancellation

Registration No	2782619	Registration date	11/11/2003
Registrant	AL-FAKHER FOR TABACCO TRADING & AGENCIES CO. LTD. P.O. BOX 911145 AMMAN, 11191 JORDAN		

### Goods/Services Subject to Cancellation

Class 034. First Use: 1995/01/10 First Use In Commerce: 2001/01/15 All goods and services in the class are cancelled, namely: flavored tobacco
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### Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
The mark is merely descriptive	Trademark Act section 2(e)(1)
Other	Please refer to petition for Cancellation for further details.

Attachments	FINAL Petition for Cancellation - 112107.pdf ( 7 pages )(26717 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/natupatel/
Name	Natu J. Patel
Date	11/21/2007

***In the matter of Registration No. 2782619  
Issued on November 11, 2003***

Registrant.

## PETITION FOR CANCELLATION

Petitioner Sinbad Grand Café (“Petitioner”) is a limited liability company doing business as Tobacco Imports USA, organized and existing under the laws of Michigan, with its principal place of business at 21060 Coolidge Highway, Oak Park, MI 48237. Petitioner is an exclusive licensee of AL-FAKHER Trading Company, LLC, of Dubai, United Arab Emirates. Petitioner believes that it will be damaged by the continued registration of the mark AL-FAKHER (“AL-FAKHER”), U.S. Registration No. 2,782,619, and hereby petitions to cancel the registration of the same.

1. Petitioner is informed and believes and thereon alleges that AL-FAKHER FOR TABACCO TRADING & AGENCIES CO. LTD. CORPORATION, (“Registrant” or “Respondent”) a company organized and existing under the laws of Amman, Jordan, is

the current owner of the United States Registration No. 2,782,619 for the mark AL-FAKHER for “flavored tobacco” in International Class 034.

2. The application for AL-FAKHER was filed on or about September 21, 2001, by Bassam Hamade (“Hamade”). AL-FAKHER was registered on the Principal Register on November 11, 2003 by the United States Patent & Trademark Office (“USPTO”).

3. AL-FAKHER was subsequently transferred to Nadine Hamade on or about November 16, 2004, who then transferred the ownership of AL-FAKHER to Omar Khaled Sarmini (“Khaled”) on or about June 1, 2006. Khaled then transferred the ownership of AL-FAKHER to the current owner and the Registrant on or about August 30, 2006.

4. On or about July 30, 2003, Hamade, the original registrant, filed a Statement of Use under Section 8 of the U.S. Trademark Act claiming May 10, 1995 as the date of first use for AL-FAKHER.

5. The application for AL-FAKHER claimed first use in commerce of AL-FAKHER since at least as early as January 15, 2001.

**COUNT I**  
**REGISTRATION OF A DESCRIPTIVE TRADEMARK**  
**WITHOUT ACQUIRED DISTINCTIVENESS**

6. Petitioner re-alleges and incorporates by reference the allegations stated in Paragraphs 1 through 5 of this Petition, inclusive as is fully set forth herein.

7. AL-FAKHER was registered on November 11, 2003 on the Principal Register of the USPTO. AL-FAKHER was issued less than five years ago and is thus cancellable on the grounds of mere descriptiveness.

8. Petitioner is informed and believes and thereon alleges that AL-FAKHER is in Arabic, which is a language familiar to an appreciable segment of American consumers. The translation for AL-FAKHER from Arabic to English is “QUALITY”.

9. The mark is merely descriptive under Lanham Act § 2(e)(1), 15 U.S.C. § 1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. Since AL-FAKHER means “QUALITY,” and is used in conjunction with flavored tobacco, the term is a laudatory term and is thus descriptive.

10. Petitioner is informed and believes and thereon alleges that the USPTO records are devoid of any evidence of acquired distinctiveness. Petitioner is thus informed and believes and thereon alleges that the prior registrant, Hamade, did not include any evidence that AL-FAKHER had acquired any distinctiveness. Hence, Registrant’s application should have been denied under Lanham Act § 2(e)(1), 15 U.S.C. § 1052(e)(1). Therefore, the registration of AL-FAKHER, which is a descriptive trademark, should be cancelled since there is no evidence that AL-FAKHER had acquired any distinctiveness.

**COUNT II**  
**FRAUD IN THE REGISTRATION**

11. Petitioner re-alleges and incorporates by reference the allegations stated in Paragraphs 1 through 10 of this Petition, inclusive as is fully set forth herein.

12. Petitioner is informed and believes and thereon alleges that Hamade omitted the English translation of AL-FAKHER during the prosecution of the trademark application.

13. The omission of an English translation for AL-FAKHER on the application during the registration constitutes a material omission or misrepresentation to the USPTO.

14. Petitioner is informed and believes and thereon alleges that this material omission or misrepresentation was made intentionally, and if the USPTO had known of the English translation for AL-FAKHER, the USPTO would not have granted registration. Therefore, the registration for AL-FAKHER should be cancelled on the basis of fraud during the registration process.

**COUNT III**  
**FRAUD IN THE STATEMENT OF USE**

15. Petitioner re-alleges and incorporates by reference the allegations stated in Paragraphs 1 through 14 of this Petition, inclusive as is fully set forth herein.

16. On or about July 30, 2003, Hamade, the original registrant, filed the Statement of Use for the mark AL-FAKHER under Section 8 of the U.S. Trademark Act claiming May 10, 1995 as the date of first use. Hamade signed the Statement of Use on or about July 24, 2003 certifying that the date of first use was true and correct.

17. Petitioner is informed and believes and thereon alleges that Hamade did not sell any flavored tobacco products bearing AL-FAKHER or otherwise use AL-FAKHER as a trademark in 1995.

18. Petitioner is informed and believes and thereon alleges that during the registration process, the USPTO relied on Hamade's representation that AL-FAKHER was used since May 10, 1995.

19. Petitioner is informed and believes and thereon alleges that Hamade knew that AL-FAKHER was not used for flavored tobacco in 1995. Therefore, the statement of use was fraudulent, and therefore the registration for AL-FAKHER should be cancelled.

**COUNT IV**  
**ABANDONMENT THROUGH NON-USE AND**  
**INVALID TRANSFER OF OWNERSHIP**

20. Petitioner re-alleges and incorporates by reference the allegations stated in Paragraphs 1 through 19 of this Petition, inclusive as is fully set forth herein.

21. The application for AL-FAKHER was filed on or about September 21, 2001 by Hamade, and was registered by the USPTO on November 11, 2003.

22. AL-FAKHER was subsequently transferred to Nadine Hamade on or about November 16, 2004, who then transferred the ownership of AL-FAKHER to Khaled on or about June 1, 2006. Khaled subsequently assigned the AL-FAKHER rights to Registrant on or about August 30, 2006.

23. Petitioner is informed and believes and thereon alleges that Hamade ceased use of AL-FAKHER for “flavored tobacco” beginning on or about 2004 lasting until on or about 2005.

24. Petitioner is informed and believes and thereon alleges that by ceasing the use of the mark, AL-FAKHER, during 2004 and 2005, Hamade abandoned the rights he had in AL-FAKHER.

25. Petitioner is informed and believes and thereon alleges that since the mark AL-FAKHER was abandoned by Hamade before the attempted transfer to Nadine Hamade, there was no valid transfer.

26. Since the transfer to Nadine Hamade was invalid, any subsequent transfer from Nadine Hamade to Khaled and Khaled’s subsequent transfer to Registrant is invalid. Therefore, mark AL-FAKHER should be cancelled.

**COUNT V**  
**NAKED ASSIGNMENT**

27. Petitioner re-alleges and incorporates by reference the allegations stated in Paragraphs 1 through 26 of this Petition, inclusive as is fully set forth herein.

28. Hamade, after registering the mark AL-FAKHER on or about November 11, 2003, transferred the mark to Nadine Hamade on or about November 16, 2004.

29. Petitioner is informed and believes and thereon alleges that the assignment from Hamade to Nadine Hamade was made without accompanying goodwill and therefore was a naked assignment. Such assignment, being naked, is cancellable by the Trademark Trial and Appeal Board.

WHEREFORE, the Petitioner prays that the mark AL-FAKHER No. 2,782,619 be cancelled, and that this petition for cancellation be sustained in favor of Petitioner.

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Petitioner hereby consents and appoints Natu J. Patel of The Patel Law Firm, P.C., 2532 Dupont Drive, Irvine, CA 92612, who is a member of the Bar of the State of California, as its duly authorized agent and attorney to prosecute this Petition and to transact all business in the Patent and Trademark Office and in the United States Courts, to sign its name to all papers which may hereinafter be filed in connection therewith, and to receive all official communications in connection with this Petition.

Respectfully submitted,  
The Patel Law Firm, P.C.

By: /natupatel/  
Natu J. Patel  
Attorney for Petitioner  
Sinbad Grand Café, LLC

The Patel Law Firm, P.C.  
2532 Dupont Drive  
Irvine, CA 92612  
Telephone: (949) 955-1077  
Facsimile: (949) 955-1877  
[npatel@thePatelLawFirm.com](mailto:npatel@thePatelLawFirm.com)